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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

FRIENDS OF YOSEMITE VALLEY,)
et al.,)
)
Plaintiffs)
)
v.)
)
DIRK KEMPTHORNE, in his)
official capacity as Secretary of)
the Interior, et al.,)
)
Defendants.)

Case No. CV-F-00-6191 AWI DLB

EIGHTH DECLARATION OF
MICHAEL J. TOLLEFSON IN
SUPPORT OF DEFENDANTS'
MOTION FOR STAY PENDING
APPEAL

DATE: February 26, 2007
TIME: 1:30 p.m.
PLACE: Courtroom 2
JUDGE: Hon. Anthony W. Ishii

I, Michael J. Tollefson, declare as follows:

1. I have served as the Superintendent of Yosemite National Park since January 2003.
2. I have submitted seven previous declarations in this matter, dated February 23, 2004,

(Doc. 162); April 15, 2004, (filed in the Ninth Circuit, Case No. 04-15682); May 21, 2004, (Doc. 204); September 3, 2004, (Doc. 227); August 16, 2005, (Doc. 251); and October 17, 2005, (Doc. 256, Att.), September 20, 2006, (Doc. 341).

3. The purpose of this declaration is to provide information about why two vital repair projects enjoined by the U.S. District Court must be allowed to be proceed while the NPS revises the Merced Wild and Scenic River Comprehensive Management Plan (Merced River Plan). The East Yosemite Valley Utilities Improvements Project (Utilities Project) and the Yosemite Valley Loop Road Rehabilitation project (Loop Road Project) both contain elements that, if left unchecked for the duration of this appeal process, would put the operation of the park—and health of natural resources and public safety—in jeopardy. In addition, these specific projects will restore and protect natural and cultural resources, while enhancing the visitor experience and making Yosemite a safer place to visit. Short of closing the doors on one of the nation's premiere national parks, the safe and orderly operation of Yosemite—which requires the ongoing completion of necessary repairs to infrastructure within the Merced Wild and Scenic River corridor—must be allowed to continue, even during the ongoing legal challenge. Given the importance of these two projects, the NPS is prepared to implement on-site activities as soon as possible.

4. The National Park Service is bound by law to protect the nation's natural and cultural resources while providing for the enjoyment and education of visitors. It is my duty as manager of Yosemite National Park to ensure that the values of the Merced River and other resources remain protected and that visitors have a safe, enjoyable, and educational experience while in the park. Given these responsibilities I am compelled to underscore the serious ramifications of the District Court's injunction of the Utilities Project and Loop Road Project. Not only does this injunction *prevent* the NPS from protecting the visitor experience, natural and cultural resources, and the outstandingly remarkable values of the Merced River, but it also puts the health and safety of park visitors and residents at significant and unnecessary risk. These adverse impacts would not be in the public's interest and would expose sensitive natural and cultural resources to irreparable harm.

1 5. The sections that follow demonstrate the importance of allowing components of the
2 Loop Road Project and Utilities Projects to proceed in the Merced River corridor:

3 **6. Yosemite Valley Loop Road Rehabilitation:** Proceeding with maintenance repairs
4 to the Yosemite Valley Loop Road project is critically important. The Loop Road is the only
5 road into and out of Yosemite Valley and is used by all Valley visitors. Additionally, the Loop
6 Road is vital for the NPS to manage and conduct essential park operations, such as law
7 enforcement, fire management, emergency medical services, and facilities maintenance.
8 However, currently, the substructure of the roadway and much of the asphalt paving is now in
9 extremely poor condition, making the road in places subject to serious failure. The litigation
10 related delays of this roadway rehabilitation project clearly compromise the safety and welfare of
11 the traveling public because roadway deterioration happens at an exponential acceleration rate.
12 Because there are multiple factors working against the integrity of this roadway such as
13 fluctuating annual traffic volumes (i.e., types and amounts of vehicles), weather conditions (i.e.,
14 the number and severity of freeze-thaw cycles), and annual amount of precipitation (i.e., rain and
15 snow accumulation), any further delay in rehabilitating the Yosemite Valley Loop Road will
16 certainly exacerbate the deterioration because time, above all, is a constant factor working
17 against the stability of a heavily weathered and unstable roadway. Should these delays continue,
18 I fully expect that, at the minimum, sections of the roadway will have vehicle access constraints;
19 and quite possibly, some sections of the roadway may need to be closed to traffic altogether.

20 7. Previous repairs to the roadway were intended to be temporary fixes until complete
21 rehabilitation could occur. These temporary measures are not likely to withstand the damaging
22 effects of ongoing harsh winter conditions encountered in Yosemite, which is why the NPS and
23 Federal Highway Administration, prior to the injunction, planned on rehabilitation during 2006.
24 As noted quite prominently in the Declaration and Exhibit 1 of Patrick Flynn, the Yosemite
25 Valley Loop Road's condition has degraded substantially since 1999, and has been rated in
26 "poor" condition since 2003.

27 8. The purpose of the Loop Road rehabilitation project is to: 1) rehabilitate an existing
28 failing roadway, 2) restore the condition and function of the road drainage system, 3) place

culverts in locations where they are needed to restore hydrology, 4) resurface or re-gravel existing roadside pullouts, 5) protect resources, by defining the limits of pullouts using barriers (i.e., curbing and rocks), and 6) correct existing road safety hazards. The Loop Road project is defined by the Federal Highway Administration as a “3-R” transportation project. By definition, a “3-R” project consists of resurfacing, restoration, and rehabilitation activities.

9. As I explained in my Seventh Declaration (September 20, 2006) and as I repeat here emphatically:

- Absolutely no new roadways or sections of roadways will be constructed, nor will any additional roadside pullouts or parking spaces be constructed.
- This maintenance and repair project will remain within the existing road prism. There will be no realignment as the project only rehabilitates the existing road and roadside turnouts.
- There will be no increase or change of user capacity within the river corridor, nor will the project predetermine or prejudice user capacity in the Merced River corridor.
- There will be no increase in the number of parking spaces.

10. Additional detail about the Yosemite Valley Loop Road project is provided in the Declaration of Patrick Flynn. Mr. Flynn is a licensed Professional Engineer with the Federal Highway Administration and has worked on the Loop Road project for more than three years. Additionally, a detailed environmental evaluation of the Loop Road project has been completed and documented in the Rehabilitation of the Yosemite Valley Loop Environmental Assessment and Finding of No Significant Impact. A full analysis of both floodplain and wetland values has been documented in the EA and FONSI, and the park has concluded that there will be beneficial effects to both resources. (YVLR FONSI, Pg 1-11.) The Loop Road project will correct and restore hydrologic functions within the river corridor. Thus, the existing injunction would further exacerbate the adverse effects to the river, whereas allowing the road maintenance will help protect and enhance its hydrological and biological values.

11. In its November 3, 2006 Order, this Court accepted the Plaintiffs’ theory that the

1 Loop Road Project will increase use of, and impacts to, the Merced River corridor. (Doc 368 at
2 21-22.) In one such statement, the Plaintiffs asked the District Court to accept the reasoning that
3 this maintenance project will “facilitate use” and allow select turnouts “to provide access to the
4 river and to nearby trails,” and therefore should not be allowed to move forward until this
5 litigation is resolved. Pl Mem 35:25-26. The NPS vigorously disagrees. If this flawed logic
6 were to be followed, the entire road system would need to be shut down, as the river is readily
7 accessible from almost all portions of the Valley Loop Road. Moreover, as the EA establishes,
8 and as I have confirmed, all of the turnouts involved in this project exist now and are accessed by
9 park visitors. The road project will not cause any increased use of the river corridor.

10 12. The NPS is prepared to proceed with this maintenance project that will repair a
11 deteriorated road and restore natural hydrologic flows under many sections of the road way. On
12 September 8, 2006, prior to the November 3, 2006 injunction, the Federal Highway
13 Administration awarded a \$14,711,407 contract, and obligated this funding for full
14 implementation of the Loop Road project. The contractor is presently on site, and as authorized
15 by the District Court has initiated work on a limited portion of the project. We have presented
16 the District Court with statements from professionals to support the urgency of moving forward
17 on the remainder of the project without delay. The Yosemite Valley Loop Road is the only road
18 into and out of Yosemite Valley. It is used by all Valley visitors and by the NPS for all types of
19 park administrative and operational functions. Loss or reduction of access over this road will
20 result in substantial harm to the public. Loss or reduction of access over this road also imperils
21 the NPS’s ability to protect the Valley’s natural and cultural resources in the event of fire or
22 other natural disasters.

23 13. **East Yosemite Valley Utilities Improvements Project:** The primary purpose of
24 this multi-faceted project is to protect human health and safety, water quality, and other
25 resources by repairing sewer lines that are leaking and failing, and that have resulted in multiple
26 sewage spills. Failure to repair these sewer lines will result in serious harm to public health and
27 safety by exposing park visitors to spills of raw sewage, and by contaminating of surface and
28 ground water. Due to the deteriorating condition of the Valley’s sewer system, on August 2,

2000, the State of California issued Yosemite National Park a *Cleanup and Abatement Order (CAO) Number 5-00-70* mandating that NPS correct the leaking and failing sewage collection system. In response to the CAO, the NPS prepared a Capital Improvement Plan (CIP) to identify deficiencies and necessary corrective actions for the sewer system to “abate discharges of untreated wastewater.” The CIP, however, focused on repairing sewer lines in their existing locations. Much of the Valley’s sewer system was installed decades ago, and the system bisects meadows, riparian areas and other sensitive resource areas. Recognizing that repairing these facilities in sensitive resource areas would perpetuate adverse environmental impacts, the NPS prepared the Integrated Utilities Master Plan (IUMP) to identify alternatives for utility routing so that utilities could be removed from meadows and sensitive resource areas (such as within the Merced River corridor), while also rectifying system deficiencies identified in the CIP. The State of California concurred with the approach outlined in the IUMP for correcting the failing sewer collection system and fully expects the NPS to comply with the CAO without further delay.

14. The CAO was issued more than six years ago. Should the NPS continue to be enjoined and prevented from repairing the failing sewer system, the NPS would be placed in the position of having to violate the CAO. Alternatively, the NPS would be forced to implement other drastic actions likely to cause public harm, such as closing campgrounds and facilities, or by limiting or preventing public access to key locations in Yosemite Valley and/or to other river segments. These types of actions would likely have dramatic negative effects on the economics of the Yosemite region and cause serious public harm. As environmental stewards and land managers, the NPS cannot responsibly delay these critical utility repairs. With every passing day, the risk of public harm increases as these failing sewer lines continue to further decay. Additional delay will undoubtedly lead to additional system failure and the increased likelihood of harmful sewage spills; long term delay may require the NPS to take actions that unnecessarily result in either serious ecological or economic damage, neither of which is in the public interest. The NPS believes that it should be allowed to proceed with these important repairs immediately.

15. Because of the serious ecological and public health and safety ramifications, the

1 District Court previously ruled on October 20, 2004, that the NPS could proceed with a series of
2 utility repairs referred to as "Option 1." Option 1 work is nearing completion. However,
3 important aspects of Option 1 remain to be completed. (The remaining repairs are described in
4 the Declaration of Jeffrey Harsha.) An injunction prohibiting the remaining work would do
5 harm to the public and jeopardize the long-term protection of the Merced River by continuing the
6 likelihood of sewage spills and by continuing the potential for water quality contamination.

7 **16. Capital Improvement Plan (CIP) Phase 2:** The CIP Phase 2 would largely focus
8 on repairing or replacing failing sewer lines and appurtenances within their existing locations.
9 As described in the CIP, there are several sewer system repairs in need of prompt attention. The
10 remaining repairs are categorized as "emergency, immediate and intermediate," and there is a
11 continued potential for threat to public health, water quality and other resources if these repairs
12 are not implemented. While conducting repairs in-place per the CIP would satisfy the CAO
13 requirements to abate sewage discharges, it could lead to additional and unnecessary ecological
14 harm. Specifically, existing old and failing lines were installed during an earlier era, and
15 numerous segments of the sewer system are currently located in ecologically sensitive areas,
16 such as within meadows and wetlands, and under the Merced River at multiple locations.

17 **17.** Rehabilitating sewer lines that are currently located in sensitive resource areas will
18 result in the continued presence of these utility corridors in meadows and riparian areas for
19 decades to come. This is due to the fact that the Congressional funding process for NPS projects
20 of this magnitude makes it extremely unlikely that Congress would appropriate additional funds
21 in the near term to Yosemite when so many other parks are desperately in need of funds to
22 address their antiquated infrastructure needs.

23 **18.** The NPS is thus faced with the choice of repairing these lines in place per the CIP, or
24 repairing these lines in a more environmentally responsible manner. As described below (under
25 IUMP Phase 2 and 3), where beneficial, the NPS is seeking to relocate lines from these
26 ecologically sensitive locations to locations under roadways, or into existing utility corridors
27 within existing developed areas.

28 **19. Integrated Utilities Master Plan Phase 2:** While the CIP involves rehabilitation of

1 sewer lines in their existing locations, work under the IUMP targets utility lines that were poorly
2 located when they were installed decades ago. Phase 2 of the Integrated Utilities Master Plan
3 will relocate and consolidate many utility systems out of sensitive resource areas near the river.
4 For example, this work would remove existing sewer lines from, and thus eliminate significant
5 sewer system repairs in, a floodplain area slated for natural resource restoration north of Lower
6 Pines Campground. If the existing lines are kept in place, natural resource restoration in this area
7 could not occur. Phase 2 of the IUMP also would allow the removal of sewer lines from within
8 the river channel serving the North Pines Lift Station and provide for the eventual removal of the
9 Lift Station (which is currently being undermined by the river) and relocate the Recreational
10 Vehicle dump station from within the river corridor (and immediately adjacent to the river) at
11 Upper Pines Campground to the Curry Village area.

12 **20. Integrated Utilities Master Plan Phase 3:** Phase 3 continues to relocate and
13 consolidate utility systems out of sensitive resource areas and rectify CIP deficiencies. An
14 important component of the Phase 3 work is that it will eliminate the need to rehabilitate the
15 main trunk sewer line from the Ahwahnee Hotel through the Ahwahnee Meadow, Camp 6, the
16 wetlands west of Camp 6, and through Cook's Meadow to the Yosemite Creek Lift Station. The
17 project will also replace the flood-damaged water line at Clark's Bridge.

18 21. Utility systems to replace those removed will be placed in developed areas or under
19 roads. A replacement sewage lift station will be located at the Ahwahnee Hotel, and a
20 replacement sewage force main will be placed under the Ahwahnee Road west to the Tecoya
21 housing area, where it will tie in with existing systems.

22 22. Additional detail about each of the utility projects is provided in the Fifth Declaration
23 of Alex Peterson and in a declaration from Mr. Jeff Harsha. Mr. Peterson is a Principal in the
24 professional firm Kennedy-Jenks, hired by the NPS to assist with sewer system repairs. Mr.
25 Harsha is a NPS Project Manager who has specialized in utility system repair for more than a
26 decade. As the Superintendent, I confirm that the CIP and IUMP projects will not cause
27 increased visitation or use of the park. All of the decisions about pipe sizes and slopes were
28 made to bring the Valley sewer system in line with modern engineering standards.

1 23. Implementation of sewer system repairs as called for in the IUMP is critical to ensure
2 compliance with the August 2000 CAO, and to correct existing public health hazards and
3 existing environmental impacts caused by deteriorating and poorly located utility lines. To delay
4 these projects for as long as a two or three years will almost certainly cause irreparable harm to
5 the river system and public health and safety by exposing people and natural resources to the risk
6 of accidentally-spilled untreated sewage and contaminated surface and ground water.
7 Implementation of these projects is also in the public interest because these projects will allow
8 natural resource restoration to occur in meadow and wetland areas along the river.

9 24. As Superintendent, I firmly believe that Yosemite National Park must be allowed to
10 function and keep the park in safe operation while we pursue the next steps in fulfilling our
11 WSRA requirements. We cannot stop the important resources protection and visitor-related
12 operations of the park. We cannot close the gates until the ongoing litigation is complete. This
13 litigation must allow a reasonable solution to ensure that both river values and visitor access can
14 be protected. As stewards entrusted with preserving of one of the world's most renowned
15 treasures, we have a duty to move ahead with the important day-to-day work of protecting
16 Yosemite National Park.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed on
18 January 24, 2007, at Mariposa, California.

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22 Michael J. Tollefson
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